UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

-----X KIMBERLY STINES, :

Plaintiff, :

**ORDER** 

-against-

21 Civ. 7884 (JGK) (GWG)

JOSEPH BERNAL, et al.,

Defendants. :

## GABRIEL W. GORENSTEIN, United States Magistrate Judge

On September 21, 2021, this case was removed to federal court by defendant Fordham University. (Docket # 1). On August 2, 2022, plaintiff Kimberly Stines filed an amended complaint. (Docket # 46). On October 6, 2022, plaintiff filed a letter stating that one of the defendants, Joseph Bernal, had died. (Docket # 68). Plaintiff now moves to substitute as defendant Alvaro Sanchez as "Curator/Attorney Ad Litem of the Estate of Joseph W. Bernal, a/k/a Joseph Worthington Bernal, Deceased." (Docket # 80). Plaintiff's motion is unopposed.

Fed. R. Civ. P. 25 provides in relevant part: "If a party dies and the claim is not extinguished, the court may order substitution of the proper party." Fed. R. Civ. P. 25(a)(1). The proper party for such a substitution is either a "successor" of the deceased party (such as a distributee) or a "representative of the deceased party" — that is, "a person lawfully designated by state authority to represent the deceased's estate." Gusler v. City of Long Beach, 2015 WL 3796328, at \*2 (E.D.N.Y. June 18, 2015); accord Smith v. Planas, 151 F.R.D. 547, 549 (S.D.N.Y. 1993) ("[B]efore a motion to substitute may be granted, a representative of [the] estate must be named as the proper party for substitution.") (citation omitted).

Here, plaintiff has provided documentation indicating that a Florida state court has appointed Alvaro Sanchez as the "curator/attorney ad litem" of Bernal's estate. <u>See</u> Docket # 80-1. Sanchez is thus the proper party for substitution.

Accordingly, plaintiff's motion to substitute (Docket # 80) is granted. The Clerk of Court is directed to substitute "Alvaro Sanchez as Curator/Attorney Ad Litem of the Estate of Joseph W. Bernal, a/k/a Joseph Worthington Bernal" for existing defendant Joseph Bernal. Plaintiff shall serve the substituted defendant within 30 days and file proof of service.

SO ORDERED.

Dated: May 5, 2023

New York, New York

CABRIEL W. CORENSTEIN
United States Magistrate Judge